Whiteside & Associates

Memo

To: **Montana Wheat & Barley Committee**

From: Terry Whiteside

Date: May 25, 2006

Re: Transportation Report

Senator Conrad Burns - Leader of the Rail Competition Efforts Continues to Push Legislation Forward

Senator Burns (R-MT) who is the lead sponsor of the Senate efforts to bring competition back to the U.S. railroad industry without re-regulation, S 919, continues to push for hearings to shine the Congressional light on the railroad problems and Congressional solutions.

Senator Burns has called for hearings which are being held today before the Senate Energy Committee focus on coal deliveries by railroad and the problems of rail capacity. He has called for hearings in the Senate Agriculture Committee, the Senate Commerce Committee and the Senate Small Business Committee on various aspects of the railroad problems.

The Senator's office has also been very vocal down at the STB which on May 11, 2006 held a hearing on Railroad Fuel Surcharges in a proceeding called Ex Parte No. 661. Senator Burns sent the following letter to Chairman Buttrey prior to the start of this important hearing. Due to its importance, the full text of the letter is reprinted here – noting his call for the STB "to ensure competition to captive markets and restraining abuses of monopoly power."

May 8, 2006
The Honorable W. Douglas Buttrey
Chairman
Surface Transportation Board
1925 K Street N.W.
Washington DC 20423

Dear Chairman Buttrey:

I applaud the decision of the Surface Transportation Board to hold a hearing examining fuel surcharges collected by railroads. This hearing will give shippers a chance to document the unfair practices that are effectively imposing rate increases on customers, and I believe will clearly show the need for immediate action by the Board. I request that you include this letter as a part of the hearing record.

Mr. Chairman, you and I have personally talked at length about my many concerns with the current practices of the rail industry, as well as what I believe is the lack of meaningful action on the part of the Surface Transportation Board. The Board has been charged by Congress with ensuring competition in captive markets and restraining abuses of monopoly power, and clearly, the Board is making little progress.

Thus, I greet this hearing with mixed feelings. I am pleased that the Board is taking action on what is clearly an unreasonable practice in the rail industry, but concerned that this hearing will not translate into action on the part of the Board. I expect that the Board will take very seriously the comments and concerns it hears from shippers today and realize that something must be done immediately to end this practice.

Let me be clear, it is not the fuel surcharge itself that disturbs me – it is the practice of charging ***more*** than the increase in fuel costs that truly amounts to an unreasonable practice. By charging shippers more than the increase in fuel costs, the Class I railroads are simply adding to the bottom line and imposing new rate hikes on customers, not covering unexpected increases in operating expenses. For captive shippers especially, these charges are particularly frustrating, because not only do they come on top of unreasonably high rates, unreliable service and growing capacity challenges, but they are imposed upon customers without any influence of the market. Monopoly power gives the railroads an unrestrained ability to levy these backdoor rate increases, and that is simply unacceptable. I urge the Board to carefully consider the facts and figures that will be discussed today and take immediate action against these unreasonable and indefensible monopolistic practices.

As you well know, I have long fought for reform in the rail industry. I will not sit idly by and watch a monopoly restrain Montana's economy and place a burden on the working families of my state and so many others. Fundamentally, this comes down to a tax on Montanans, an unreasonable imposition of rate increases that affects utility customers, small businesses, and family farmers. The Board is charged with the responsibility to restrain the monopoly power of the freight railroads, and you have an obligation to my constituents and those across the nation to do just that.

In fact, there are few sectors of the economy that are as uniquely burdened by the abuses of monopoly power in the rail industry as agriculture. Montana growers pay a premium for any of their inputs that come into the state by rail and then they take a discount on their grain at the elevators when they ship product out. Unreliable service from the railroads often results in grain being piled on the ground, with thousands of bushels spoiled every harvest. Retailers are growing increasingly concerned about their ability to supply fertilizer and chemicals to growers, as efforts on the part of the railroads to push hazardous material shipments on to the nation's highways increase. On top of all those legitimate frustrations that growers are dealing with, the Class I railroads now impose a "fuel surcharge" that, in many cases, far exceeds the actual increase in fuel costs.

Montana farmers are simply fed up, yet because of the Board's unresponsive actions in the past, they often feel they have no where to turn to try to resolve their concerns with rail rates and service. Because Montana is captive to just one Class I railroad, producers lack the ability to "vote with their feet" and exercise the type of meaningful choices that characterize free and competitive markets. Instead, they must absorb whatever costs the monopoly power chooses to impose upon them.

While the impact on producers is extreme, agriculture is certainly not alone in feeling the pinch of these unfair practices. During its hearing, the Board will hear from a diverse cross-section of the American economy and will hear in colorful detail just how far these unfair practices are being taken. All of these stories come down to an inescapable fact – imposing charges on shippers that exceed the increase of cost in fuel amounts to a tax on the American economy that is being unilaterally imposed by monopoly or oligopoly power. That is a situation that cries out for Board action. Where markets are competitive, the Board's reach is limited. But in captive markets, the Board has a duty to act in the face of unrestrained abuse of monopoly power. This is not "business as usual" – this is an unreasonable practice on the part of a monopoly.

Sincerely,

Conrad Burns

Excerpts from Comments of U S Senator Byron Dorgan on Ex Parte No. 661 Rail Fuel Surcharges

Senator Dorgan (D-ND) continues to focus his energy on increasing rail competition.

In his comments to the STB in XP 661, the Senator stated in part, "Railroads, like other industries, must confront the challenge of rising fuel costs. And railroads, like other industries, have the right to recover some of their increased fuel costs by imposing a fuel surcharge on their customers. Many businesses do this. Even taxi drivers in Washington, D.C. impose a fuel surcharge on their customers."

"But the question the Board is considering today is whether fuel surcharges imposed by the railroads were intended to simply help cover the additional cost of fuel on the particular shipment to which they were applied, or whether these surcharges were inappropriately designed to offset the railroads' system-wide fuel costs. "

"I have heard from many North Dakota shippers who believe, as I do, that there does not appear to have been any relationship between the amount of the surcharge imposed and the actual increase in fuel costs for a particular shipment. That is not appropriate, and it is not fair."

“The largest carrier in North Dakota is BNSF Railway, which since the beginning of 2006 has used a mileage-based fuel surcharge system, instead of assessing fuel surcharges as a percentage of the rail rate. BNSF should be commended for making this change, and other carriers should do the same. However, there are still serious questions about whether surcharges assessed under the percentage-based system accurately reflected the increased costs of fuel for those shipments. “

“In some cases, the railroad’s fuel surcharges exceeded the actual cost of fuel on a particular shipment by several hundred percent. These surcharges were like a taxi driver who imposes an extra fee on his customers to offset not only the increased costs of fuel for their trip, but also the costs of fuel for cabs he owns in six other cities. Of course, in the real world, customers have the ability to take a different taxi cab. But many rail customers in North Dakota do not have that luxury; they are captive to one rail shipper, and they have no choice but to pay the additional fuel surcharge.”

Fuel surcharges and North Dakota agricultural shippers

“North Dakota’s grain elevators are also subject to steep fuel surcharges that eat into farm income and threaten the survival of our farm families. “

“For example, researchers at the UGPTI found that shipments of wheat from North Dakota grain elevators to Duluth, Minnesota paid an average fuel surcharge of $302 per-car. This was 112% higher than the actual average fuel cost for that shipment, which was $142 per-car. In these cases—and many others—BNSF recouped its fuel costs for that trip, and then some.”

“The North Dakota Grain Dealers Association has also gathered data made available by BNSF Railway to illustrate glaring examples of fuel surcharges that greatly exceeded the increased cost of fuel for a particular shipment, some by as much as $20,000.”

“For example, in 2004, a grain elevator in Crete, North Dakota shipped a 26-car train of wheat to Minneapolis, Minnesota. According to BNSF’s data, the cost of fuel for this shipment increased by $569 to a total of $1,623. Yet the surcharge on this shipment was $4,172. This is an overcharge of $3,603. It is also 633% more than the actual fuel increase.”